



The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

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L. JOYCE HAMPERS
COMMISSIONER

October 27, 1980

Your client conducts sales of used household items in the homes of the items' owners. The sales are akin to garage sales, except that in most cases virtually the entire contents of the home are put up for sale.

Your client does not buy or sell any merchandise for her own account. She comes to the owner's home prior to the sale to recommend a price for each item to be sold, and acts as the salesperson at the sale itself. She also makes all incidental arrangements in connection with the sale. Her remuneration is based on a percentage of the proceeds from the sale.

The sales usually last one day only but sometimes take place on two consecutive days; in no case does your client conduct more than two such sales a year for any single owner of items sold.

You inquire whether your client must register and collect tax as a sales tax vendor, and whether the sales of the household items are exempt as casual and isolated sales.

Massachusetts General Laws Chapter 64H, Section 7 provides that no person shall do business in Massachusetts as a vendor unless a registration shall have been issued to him. Section 3 of Chapter 64H requires vendors to collect the sales tax from purchasers, and Section 2 requires them to pay over the tax to the Commissioner.

"Vendor" is defined in Chapter 64H, Section 1(18) as "a retailer or other person selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of [the sales tax]." Section 1(9) defines "retailer" as including

"(a) Every person engaged in the business of making sales at retail.

(b) Every person engaged in the making of retail sales at auction of tangible personal property whether owned by such person or others.

[and]

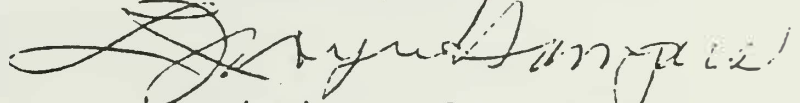
(d) Every salesman, representative, peddler or canvasser who, in the opinion of the commissioner, it is necessary to regard for the efficient administration of this chapter as the agent of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him. The commissioner may, in such cases, treat and regard such agent as the retailer jointly responsible with his principal, employer or supervisor for the collection and payment of the tax imposed by this chapter."

Chapter 64H, Section 6(c) exempts from sales tax casual and isolated sales by a vendor not regularly engaged in the business of making sales at retail. Sales Tax Regulation 830 CMR 16.01 lists examples of exempt casual and isolated sales, including "[a] person selling his household furniture"; but provides that when an auctioneer conducts any sale listed as otherwise exempt, it is not exempt as a casual and isolated sale.

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Based on the foregoing, it is ruled that your client must register as a vendor and collect and pay over sales tax on the sales of the household items; the sales are not casual and isolated sales within the meaning of Chapter 64H, Section 6(c).

Very truly yours,



Commissioner of Revenue

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